IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1624 OF 2006

Dilip s/o B.R. Trimbakar ... Petitioner

V/s

Smt. Vijaya Ramakant Gharpurkar ... Respondent

Mr. N.P. Bhavsar for the petitioners.

Mr. S.N. Gawade for the respondent No.1.

Mr. Vishwanath Talkute for the respondent No.2.

CORAM: P.V. KAKADE, J.

DATED: 13TH MARCH, 2006
Mentioned. Not on board.

P.C.:

1. Heard learned counsel for both parties. Perused the record.

2. In view of the facts and circumstances, the petition can be disposed of immediately on the basis of available record.

3. The petition is aimed against the order dated 13.2.2006 passed by the Trial Court making the notice

partly absolute to the said Interim Notice No. 424 of 2005 the subject matter of this petition which was taken out by the present petitioner for extension of time for implementation of mandatory directions passed by the Court on 23.2.2005 in contempt Notice No. 975 of 1999 which was filed by the defendant No.2. By the said application defendant No.2 had requested for two months' time.

4. In pending R.A.D. Suit No. 3544 of 1989 injunction order came to be issued in Injunction Notice No. 5418 of 1989 whereby notice was partly made absolute and defendant No.2 was restrained on acting upon an agreement entered into between the parties providing alternative accommodation in the proposed new construction by him till the hearing and final disposal of the suit. Inspite of the said order, defendant No.2 took over the possession and handed it over to the present petitioner. It is contended on behalf of the petitioner that he was forced to take possession. However, at that juncture, contempt notice was issued under Notice No. 975 of 1999 wherein respondent No.2 tendered his un-conditional apology which was accepted. However it was directed that the suit premises would be evicted and parties shall obey the order passed by the

Court on 23.3.1992. It was further directed that if the defendant failed to vacate the disputed flat and obey the order of the Court passed on 23.3.1992, his property would be put under attachment. Mandatory injunction was also granted against respondent No.2 and he was directed to close the door erected between two flats of 2nd floor, at Louis D'Mello Compound, Andheri (W), Mumbai - 400 058.

5. The petitioner made the review application against the said order, however, that came to be rejected. Hence the petition.

6. In view of the facts and circumstances, I do not see any reason to show any indulgence to the present petitioner as it appears from the record that he was quite aware of the fact that he was illegaly being put in possession of the property by defendant No.2 who has categorically expressed his unconditional apology for breach of the Court order. In view of this position, no relief can be granted to the petitioner. The Trial Court has also observed that defendant No.1-D has obtained possession of the said Flat No.11 by violation of temporary injunction of the Court even though she was aware of the said order and thus she has no right to

remain in possession of the said premises. Moreover, it cannot be overlooked that the Trial Court, while deciding the contempt petition has directed that the suit property should be kept under lock of the Court after it is evicted and the order regarding possession thereof shall be subject to final adjudication in the suit.

7. Under the circumstances, there is no merit in the petition.

The petitioner is required to obey the order of the Court. However, it is directed that the Trial Court shall expedite the hearing of the suit itself so as to complete the adjudication process within four months from the date of this order.

With these directions, the petition stands dismissed with no order as to costs.

.....